

uu

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6558 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

SHRIRANG TOBACCO PROCESSORS LTD.

Versus

STATE OF GUJARAT & ORS.

-----

Appearance:

MR AK CLERK for Petitioner  
MR NIGAM SHUKLA for Respondent No.1 & 3  
MR GIRISH PATEL for Respondent No.4

-----

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The learned counsel for the respondents raised objection that this petition is not maintainable. To appreciate the objections raised by the learned counsel for the respondents, it is necessary to give out the facts of this case, in brief, giving rise to this writ petition.

2. The petitioners, by this Special Civil Application, challenged the applicability of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, (hereinafter referred to as the 'Act, 1966) to the industrial premises of the petitioner-Company situated at Vithal Udyognagar, Anand, and the action of the State Government in applying the said Act to the said industrial premises .

3. The main thrust of arguments of the learned counsel for the petitioner is that the petitioner-Company is not engaged in making of Beedis or Cigars. The petitioner-Company, in its industrial premises aforesaid, is only processing tobacco. The learned counsel for the petitioner further contended that processed tobacco may be used for making of Beedis and Cigars, but merely on this ground, the said Act has no applicability to the industrial premises of the petitioner-Company.

4. In the present case, the petitioner has not challenged the validity of the Act aforesaid or any of its provisions. The learned counsel for the petitioner conceded that this Act has already been held to be valid by the Supreme Court. So, the only question which calls for consideration of this Court is whether the said Act is applicable to the industrial premises of the petitioner or not? The prayer made by the petitioner in this Special Civil Application is extracted below:

(A) quashing and setting aside the report of the Inspector under the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, dated 8th December 1985 at Annexure 'E';

(B) restraining the respondent-authorities from applying the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 to the factory of the petitioner-Company at Vithal Udyognagar, Anand and from imposing the provisions of the said Act against the petitioner-Company, and further restraining the respondent-authorities from taking any penal action against the petitioner-Company and its Directors under the provisions of the said Act;

(C) granting such other and further reliefs and passing such other and further orders as the circumstances of the case may require;

(D) awarding the costs of this petition.

5. The inspector of the department made a report

that the provisions of the Act, 1966, are applicable to the petitioner's industrial premises. In para-19 of this Special Civil Application, prayer has been made by the petitioner for grant of interim relief, which reads as under:

"During the pendency and final disposal of this Special Civil Application, the petitioner prays that Your Lordships may be pleased to make an order restraining the respondent-authorities from applying the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 to the factory of the petitioner-Company at Anand and from enforcing the provisions of the said Act against the petitioner-Company and from taking any penal action against the petitioner-Company or its Directors or Officers under the said Act."

6. At the time when this petition has been filed, it appears that the petitioner was only having apprehension of taking of some penal action against it by the State Government, but from the interim relief which has been granted by this Court, it is clear that the penal action has been initiated and complaint has already been filed in the Court. This Court has stayed the proceedings of the criminal case No.5260 of 1984, which was filed in the Court of J.M.F.C., Anand.

7. The learned counsel for the respondents contended that the validity of the Act, 1966 and any of the provisions thereof has not been challenged, and as such, proper and appropriate course for the petitioner is to raise all these objections before the Criminal Court where prosecution has been lodged against it. The question whether the Act, 1966 is applicable or not is a mixed question of law and facts. The petitioner has to establish the facts after leading evidence that this Act has no applicability.

8. The learned counsel for the petitioner, on the other hand contended that the petitioner has come up before this Court to get a declaration that the Act, 1966 is not applicable to its industrial premises .

9. The relief of declaration as prayed for is not called for at this stage. The question has been raised by the petitioner regarding the applicability of the Act, 1966. There is a rift between the parties regarding the applicability of the Act, 1966 to the industrial premises of the petitioner. The respondents have stated that this Act is applicable which the petitioner does not accept. This controversy has to be gone into and adjudicated by

the competent Court. But the question is that whether, when the prosecution has already been filed against the petitioner in which it is open to it to take the defence and establish that this Act is not applicable, filing of this writ petition before this Court for grant of declaration that this Act is not applicable to its industrial premises, is maintainable or not. Looking to the nature of controversy raised, I do find some justification in the contention of the learned counsel for the respondents that this is not a pure question of law which has to be decided. To decide this question, the Court has to go on the facts also which have to be established by the parties by producing oral as well as documentary evidence. Section 3 of the Act, 1966 provides that save as otherwise provided in this Act, no employer shall use or allow to be used any place or premises as industrial premises unless he holds a valid licence issued under this Act and no such premises shall be used except in accordance with the terms and conditions of such licence. The report of the department is that the industrial premises of the petitioner-Company are covered under the Act, 1966. It is not the case of the petitioner that it has taken any licence u/s.3 of the Act, 1966. In view of these facts, it may be a case of contravention of Section 3 of the Act, 1966, where it is to be established that the industrial premises of the petitioner is covered under the provisions of the Act, 1966. Section 33 of this Act provides that any person who contravenes any of the provisions of this Act or any Rule made thereunder, shall be punished for the first offence with a fine which may extend to Rs.250/-, and for second or any subsequent offence, with imprisonment for a term which shall not be less than one month or more than six months or with fine which shall not be less than Rs.100/- or more than Rs.500/- or with both. For the contravention of the provisions of this Act, the respondent State has lodged prosecution against the petitioner which is pending in the competent Court. The proceedings of the said criminal case have been stayed by this Court. The matter is pending before the competent Court and the petitioner will have all opportunity there to establish that the provisions of the Act, 1966 are not applicable to its industrial premises. In case the petitioner is able to establish that this Act is not applicable to its industrial premises, then there is no question for prosecution and the Court has to record its acquittal. The petitioner, instead of approaching this Court, should have approached the criminal Court, which precisely has not been done in the present case. I fail to see any justification in the action of the petitioner to approach this Court when it has ample and effective

opportunity to prove before a competent Court that the provisions of the Act, 1966 are not applicable to its industrial premises.

10. In the result, this Special Civil Application is dismissed only on the ground that the petitioner first to take a decision of the Criminal Court on the issue which has been raised in this case which is directly and substantially in issue in the criminal proceedings. The criminal case pending against the petitioner is of the year 1984 and the proceedings thereof remained stayed for all the time under the order of this Court. In the circumstances, interest of justice will be met in case necessary directions are issued to the Court concerned where the criminal case is pending, to dispose the same at an early date. To avoid any delaying tactics by either of the parties, in the criminal case, it is hereby ordered that the petitioner and the respondent No.3 shall appear before the Court of J.M.F.C., Anand, in Criminal Case No.5260 of 1984 on 9th September, 1996. The prosecution thereafter shall complete its evidence within a period of six months from the first date fixed by the Court for taking evidence. The petitioner will have to complete its evidence within a period of four months from the date of closure of evidence of the prosecution. Thereafter the Court shall decide the matter, as early as possible, but not later than two months after completion of evidence and arguments of both the parties. This Special Civil Application is dismissed. Rule is discharged subject to aforesaid directions. No order as to costs.

.....

(sunil)